IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GAIL J. GALLOWAY,

Plaintiff, : No. 1:CV-00-0649

:

v. : (Judge Rambo)

(Judge Kailit

Electronically Filed

PENNSYLVANIA BOARD OF :

PROBATION AND PAROLE, et al.

Defendants, :

EXHIBIT IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

GERALD J. PAPPERT Attorney General

By: Francis R. Filipi

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Fax: (717) 772-4526 Date: May 28, 2004

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GAIL J. GALLOWAY

Plaintiff:

No. 1:00-CV-0649 v.

PENNSYLVANIA BOARD OF (Judge Rambo)

PROBATION AND PAROLE, et al.,

Defendants: (Electronically Filed)

DECLARATION OF JOSEPH M. SMITH

I, Joseph M. Smith, hereby declare that the following information is true and correct and from my personal knowledge or based upon records routinely maintained during the operation of the Pennsylvania Board of Probation and Parole (hereinafter, Board), whose entries are made at or near the time by, or from information transmitted by, a person with knowledge as a normal part of operating the Board:

At the time relevant to this action, I was a parole agent assigned to the 1. Altoona District Office of the Board. Since that time, I have been promoted and presently hold the position of District Director of the Scranton District Office.

- Board records show plaintiff was convicted of two counts of theft in 2. the Court of Common Pleas for Huntingdon County, Pennsylvania and was sentenced to a term the controlling minimum of which was two years and the controlling maximum of which was seven years. The minimum term expired on September 14, 1994 and the maximum term expired on September 14, 1999.
- 3. On September 14, 1994, plaintiff was released on parole after executing a form containing both the standard conditions of parole as well as one special condition concerning payment of a supervision fee. Attached hereto as Exhibit A is a true and correct copy of the Conditions Governing Parole/Reparole for plaintiff that bears his signature and the date September 14, 1994.
- 4. The Board imposes in all supervision cases a condition numbered on the form as 5.b. which states:
 - 5. You shall:

refrain from owning or possessing any firearms or other b. weapons....

Exhibit A, page 2.

At the time this action arose, June 1, 1998, I had been plaintiff's 5. parole agent for a few months.

- 6. Prior to my arrival at plaintiff's home on June 1, 1998, my superior informed me that he had heard that plaintiff's son, David Galloway, was interested in purchasing a .50 caliber weapon for his father as a birthday present. Both because of this information as well as because I needed to make a routine contact with plaintiff as a parolee on my caseload, I went to plaintiff's home that day. I went to plaintiff's home intending to ask him if he possessed any firearms or other weapons.
- 7. The information my supervisor passed on undoubtedly increased the likelihood I would ask plaintiff about weapons on that day. However, I have asked this question of many other parolees under my supervision without specific information to cause me to ask it.
- 8. I went to plaintiff's home and found plaintiff on his porch. During the initial conversation, I asked him if there were any weapons on the property. He told me that there were; that they were his son's, although some were still registered to plaintiff.
- 9. When I asked him to show me, he willingly got up and I followed him into his house. At all times while we were walking through plaintiff's home he was in the lead.

10. I followed plaintiff down the hallway until we came to a bedroom door. Contrary to plaintiff's representations, the door was closed but not locked.

Case 1:00-cv-00649-SHR

- 11. Plaintiff opened the door and I followed him into the bedroom. I recall he stood to my right and before me was a closet with a sliding door. Just as the bedroom door was unlocked, the sliding door to the closet was not secured in any way.
- 12. When I opened the closet door, I immediately saw a 9-millimeter handgun lying on a shelf. I examined it and found it was loaded. I also found an unsecured gun cabinet in the closet and a number of other weapons in the closet. A true and correct copy of the confiscation report I prepared is attached to this declaration as Exhibit B. I listed all of the weapons and related items I found in that closet and confiscated at page 2 of the exhibit.
- 13. Because of plaintiff's easy accessibility to these weapons, I viewed plaintiff as having constructive possession of them in violation of Condition 5b. Consistent with this assessment, I arrested plaintiff and charged him with that violation. Exhibit C is a true and correct copy of my handwritten notice of charges, which bears plaintiff's acknowledgement of receipt in the upper right-hand corner.

- I arrested plaintiff because of the weapons I observed and confiscated 14. and not for any other reason. Specifically, while the information that plaintiff's son was thinking about purchasing a gun for his father prompted me to ask plaintiff about weapons, it was not the reason I viewed plaintiff as a technical parole violator. Nor did I harbor any desire to possess or own the weapons I found and confiscated and was unaware that any other person might have had such a desire,
- 15. Further, I made the decision to arrest plaintiff for this violation without consulting anyone else. Plaintiff is not the only parolee whom I have arrested for constructive possession of weapons.
- 16. I subsequently testified truthfully and under oath at the violation hearing as to exactly what had occurred. Based on the record developed at that hearing the Board determined to revoke plaintiff's parole.

Executed this Zle day of May, 2004

Joseph M. Smith

District Director, Scranton District

Pennsylvania Board of Probation & Parole

JPP-10(rev 3/88)

ORDER TO ELEASE ON PAROLE/REPARCLE

Pennsulvania Board of Probation and Parole haraby grants parole/reparole to prisoner named and on the sentences described below. It further ordered hat he/she be released on the date indicated below, subject to Soard approval f a satisfactory plan and to the Conditions Covering Parcle/Reparcle (PBPP-11) nd upon condition that he/she commits no misconducts or crimes, and that no vidence of past crimes or mental illness, previously undiscovered, comes to

Inst.No. Authorized Date of Release ParNo. ame of Prisoner MARKET TO THE OWNER THE REAL AIL J. GALLOWAY 2076I BY5581 09-14-94 * Date of Return lace of Confinement (Reparole Cases Only) BREST ALL STRANGETT TATE CORRECTIONAL INSTITUTION HUNTINGOON ICHNSTOWN COMMUNITY CORRECTIONS CENTER) County Date of Tp Term(s)/Indictment OTN(s) Offense(s)/Charge(s) Sentence(s) Number(s) 07/16/91 CC CP 900000109 C3979861 T C3979861 THEFT (CI 1 %2) HUNTIN 07/16/91 Term(s) of Sentence(s) Expiration Dates Judge(s)

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T Signed this Sist day of August, 1994 at Harrisburg, PA

Minimum Maximum

BOARD OF PROBATION AND PAROLE

Exhibit A, page 1

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Pennsylvania Board of Probation and Parcle

PBPP-11 (Rev. 7/91)

CONDITIONS GOVERNING PAROLE/REPAROLE

To: Gail J. Galloway

Parole No. 2076-I

Report in person or in writing within 48 hours to the district office or sub-office listed below, and do not leave that district without prior written
permission of the parole supervision staff.

Altoona District Office Executive House, Rm. 204 615 Howard Avenue Altoona PA 16601

2. Your approved residence is listed below and may not be changed without the written permission of the parole supervision staff.

c/o Beverly A. Galloway (Wife)
RD 1 Box 30
Petersburg PA 16669

Exhibit A, page 2

3. Maintain regular contact with the parole supervision staff by:

reporting regularly as instructed and following any written instructions of the Board or the parole supervision staff.

b. notifying the parole supervision staff within 72 hours of: (I) your arrest or (2) your receipt of a summons or citation for an offense punishable by imprisonment upon conviction; and

- c. notifying the parole supervision staff within 72 hours of any change in status, including, but not limited to, employment, on-the-job training, and education.
- Comply with all municipal, county, state and Federal criminal laws, as well as the provisions of the Vehicle Code (75 Pa. C.S. § 101 et seq.).
 and the Liquor Code (47 P.S. § Hol et seq.)
- 5. You shall:
 - abstain from the unlawful possession or sale of narcotics and dangerous drugs and abstain from the use of controlled substances within the meaning of the Controlled Substance, Drug, Device, and Cosmetic Act (35 P.S. § 780-101 et seq.) without a valid prescription;
 - b. refrain from owning or possessing any firearms or other weapons; and
 - c. refrain from any assaultive behavior.
- 6. You shall pay fines, costs, and restitution imposed on you by the sentencing court. You shall establish with appropriate county authorities within thirty (30) days of your release from prison a payment schedule for the fines, costs and restitution owed for those cases for which you are now on state parole. Thereafter, you shall:
 - a. pay these obligations according to the established payment schedule or as ordered by the court;
 - b. provide proof of such payment to parole supervision staff; and
 - c. keep the parole supervision staff and the court informed of any changes in your financial ability to pay fines, costs and restitution.
- You shall comply with the special conditions listed on page 2 imposed by the Board and with special conditions imposed by the parole supervision staff.

Additionally, should problems arise, or questions occur concerning the conditions of your parole/reparole, consult with the parole supervision staff, and they will help you in the interpretation of the Conditions of Parole/Reparole.

If you are arrested on new criminal charges, the Board has the authority to lodge a detainer against you which will prevent your release from custody, pending disposition of those charges, even though you may have posted ball or been released on your own recognizance from those charges.

If you violate a condition of your parole/reparole and, after the appropriate hearing(s), the Board decides that you are in violation of a condition of your parole/reparole you may be recommitted to prison for such time as may be specified by the Board.

If you are convicted of a crime committed while on parole/reparole, the Board has the authority, after an appropriate hearing, to recommit you to serve the balance of the sentence or sentences which you were serving when paroled/reparoled, with no credit for time at liberty on parole.

If you think that any of your rights have been violated as a result of your parole supervision, you may submit a timely complaint in writing, first to the district director of the district office through which you are being supervised. If your complaint is not resolved to your satisfaction, you may then submit your complaint in writing to the Pennsylvania Board of Probation and Parole, Director of Supervision, P.O. Box 1661, Harrisburg, Pennsylvania 17105-1661.

In consideration of being granted the privilege of parole/reparole by the Pennsylvania Board of Probation and Parole, I hereby agree that:

if I am ever charged with a parole violation arising out of my conduct while in a jurisdiction other than the Commonwealth of Pennsylvania, the revocation of my parole for that violation may be based solely on documentary evidence and I hereby waive any right to confront or cross-examine any person who prepared any such documentary evidence or who supplied information used in its preparation;

1 expressly waive extradition to the Commonwealth of Pennsylvania from any jurisdiction in or outside of the United States, where I may be found, and I shall not contest any effort by any jurisdiction to return me to the United States or to the Commonwealth of Pennsylvania; and

I expressly consent to the search of my person, property and residence, without a warrant by agents of the Pennsylvania Board of Probation and

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Page 2 of 2 Pages

To: GAIL J. GALLOHAY

Parole No. 2076I

I. tNo: BY5581

- SPECIAL CONDITIONS:

YOU SHALL PAY A MONTHLY SUPERVISION FEE OF \$25.00 TO THE PAROLE BOARD WHEN UNDER SUPERVISION WITHIN THE COMMONWEALTH OF PENNSYLVANIA (ACT 35 OF 1991).

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Exhibit A. page 3

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Signature of Paralee
9-14-94

Witness

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CONFISCATION REPORT

C) Drug Paraphernalia: D) Pagers:	TO:	Sur Johnson	DATE OF REPORT:	6-1-93 /6.2.98
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Agent's Signature

Exhibit B, page 1

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#6)STEVENS	SHOTGUN BOL	T 58	20 GA	UNKNOWN	USA
#7)JC HIGGINS	SEMI SHOTGUN	66	12 GA	UNKNOWN	
#8)NAT D'ARMES	RIFLE BOLT	HERSTAL-	.30	27854	COLUMBIA
DE GUERRE		BELGIQUE			
#9)MARLIN	RIFLE LEVER	1895	45-70	B00000350	USA
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PENNSYLVANIA BOARD OF PROBATION AND PAROLE

NOTICE OF CHARGES AND HEARING

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				(Signature)	Exhibi

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GAIL J. GALLOWAY,

Plaintiff, : No. 1:CV-00-0649

1101 1101 0

v. : (Judge Rambo)

(Judge Kallioo)

PENNSYLVANIA BOARD OF : Electronically Filed PROBATION AND PAROLE, et al. :

Defendants,

CERTIFICATE OF SERVICE

I, Francis R. Filipi, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on this 28th day of May, 2004, I caused to be served a true and correct copy of the foregoing document titled Exhibit in Support of Defendants' Motion for Summary Judgment by depositing same in the United States Mail, first-class postage prepaid to the following:

Gail Galloway R.D. #1, Box 30 Petersburg, PA 16669

s/Francis R. Filipi
FRANCIS R. FILIPI
Senior Deputy Attorney General